

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION**

<b>IN RE:</b>	)	<b>CASE NO. 09-13959-whd</b>
	)	
<b>FOURTH QUARTER PROPERTIES XLVII, LLC,</b>	)	<b>CHAPTER 11</b>
	)	
<b>Debtor.</b>	)	
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	)	
<b>WACHOVIA BANK, NATIONAL ASSOCIATION,</b>	)	
	)	
<b>Movant,</b>	)	
	)	
<b>vs.</b>	)	<b>Contested Matter</b>
	)	
<b>FOURTH QUARTER PROPERTIES XLVII, LLC,</b>	)	
	)	
<b>Respondent.</b>	)	
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**MOTION FOR RELIEF  
FROM THE AUTOMATIC STAY**

COMES NOW Wachovia Bank, National Association (“Wachovia”), pursuant to Section 362(d) of Title 11, United States Code (the “Bankruptcy Code”), and moves this Court for an order granting it relief from the automatic stay to exercise its rights and remedies because (1) the debtor and debtor and possession herein, Fourth Quarter Properties XLVII, LLC, (the “Debtor”), is unable to provide Wachovia with adequate protection of its interest in the property of the Debtor, and (2) the Debtor has no equity in the property of the Debtor in which Wachovia has an interest and such property is not necessary for an effective reorganization of the Debtor (the “Motion”). In support of its Motion, Wachovia respectfully states as follows:

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

1. On November 2, 2009 (the “Petition Date”), the Debtor filed its Chapter 11 bankruptcy petition in this Court. No trustee has been appointed in this case, and the Debtor remains in possession.

2. The Debtor’s primary asset consists of approximately 104 acres of undeveloped real property situated in Fulton County, Georgia.

3. In June 2005, Wachovia made a secured loan (the “Loan”) to the Debtor secured by the Property pursuant to that certain Loan Agreement, dated June 3, 2005. A true and correct copy of the Loan Agreement is attached hereto as Exhibit “A”.<sup>1</sup>

4. Pursuant to the Loan Agreement, the Debtor made in favor of Wachovia (i) that certain Promissory Note, dated June 3, 2005, in the original principal amount of \$35,000,000.00 (as amended or otherwise modified through the Petition Date, the “First Note”), and (ii) that certain Promissory Note, dated February 1, 2008, in the original principal amount of \$25,000,000 (as amended or otherwise modified through the Petition Date, the “Second Note”; the Second Note, together with the First Note, are referred to herein collectively as the “Notes”). The First Note was amended pursuant to that certain Note Modification Agreement (the “NMA”), dated September 10, 2007, by and between the Debtor, Wachovia and Stanley E. Thomas. True and correct copies of the Notes and the NMA are attached hereto as Composite Exhibit “B”.

5. The Notes are secured by certain real and personal property owned by the Debtor, including primarily the aforementioned 104 acres of real property (such real and personal property, as described in more detail in the Security Deed and the Assignment, is referred to

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<sup>1</sup> Exhibits are included in the filed copy of this Motion, and in the service copies of the Debtor, the United States Trustee and the entities appointed to the Committee of Creditors Holding Unsecured Claims, as required by Federal Rule of Bankruptcy Procedure 4001(a). Exhibits will be provided, upon request to the undersigned, to any other party served with this Motion.

herein as the “Property”) pursuant to (i) that certain Deed to Secure Debt, Assignment of Rents and Security Agreement (as amended and otherwise modified to date, the “Security Deed”), dated June 3, 2005, made by the Debtor in favor of Wachovia and recorded at Book 40170, beginning at Page 505, Fulton County, Georgia records, and (ii) that certain Assignment of Rents and Leases (as amended and modified to date, the “Assignment”), dated June 3, 2005, made by the Debtor in favor of Wachovia and recorded at Book 40170, beginning at Page 536, Fulton County, Georgia, records. The Security Deed and the Assignment were amended pursuant to that certain Amendment Deed to Secure Debt, Assignment of Rents and Security Agreement and Assignment of Leases and Other Loan Documents (the “SD Amendment”), dated February 1, 2008, made by the Debtor, Wachovia and Stanley E. Thomas in connection with the issuance of the Second Note. The SD Amendment was recorded at Book 46292, beginning at Page 123, Fulton County, Georgia, records.

6. Pursuant to the Security Deed and the Assignment, the Debtor (a) granted to Wachovia a security title and security interest in and to the Property, and (ii) assigned to Wachovia all of its right, title and interest in and to all leases, subleases, licenses or occupancy agreements of any portion of the Property and the rents, issues and profits and other sums arising therefrom. True and correct copies of the Security Deed, the SD Amendment and the Assignment are attached hereto as Exhibit “C”, Exhibit “D” and Exhibit “E”, respectively. The Notes, the Loan Agreement, the Security Deed, the Assignment and all other documents, instruments and agreements evidencing, securing or relating to the Loan, as amended and modified by the parties to the Petition Date, are hereinafter collectively referred to as the “Loan Documents”).

7. The Notes matured, and the Loan came due, on September 10, 2008. The Debtor did not pay the Loan in full at maturity. Such failure is an Event of Default under the Loan Documents. Such Event of Default continues to exist under the Loan Documents as of the Petition Date.

8. As a result of the Debtor's aforementioned Event of Default, Wachovia advertised the Property for a November 3, 2009 foreclosure sale. On November 2, 2009, the Debtor filed its petition for relief under Chapter 11 of the Bankruptcy Code with this Court.

9. On the Petition Date, the Debtor was obligated to Wachovia under the Notes, the Loan Agreement, the Security Deed, the Assignment and the other Loan Documents for principal and accrued interest (exclusive of any other amounts due and owing under the Notes, the Loan Agreement, the Security Deed, the Assignment and the other Loan Documents) in the amount of \$64,331,234.04.<sup>2</sup>

10. On information and belief, the Property (i) is not worth more than \$40 million, and (ii) is declining in value.

## **II. ARGUMENT**

11. Section 362(d) of the Bankruptcy Code provides, in pertinent part, as follows:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if –

(A) the debtor does not have an equity in such property; and

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<sup>2</sup> The Debtor has listed this claim on Schedule A at approximately \$63.4 million. The Debtor has since stipulated to the \$64,331,234.04 figure.

(B) such property is not necessary to an effective reorganization;

12. Wachovia is entitled to relief from the automatic stay under both Section 362(d)(1) and Section 362(d)(2) of the Bankruptcy Code.

**A. Wachovia Is Entitled to Relief from Stay Because the Debtor Cannot Provide Adequate Protection of Wachovia's Interest in the Property.**

13. On information and belief, the Property is decreasing in value.

14. The Debtor has not provided to Wachovia, and has not offered to provide to Wachovia, any adequate protection for the ongoing decrease in the value of the Property.

15. As a result of the foregoing failure of adequate protection of Wachovia's interest in the Property, Wachovia is entitled to relief from the automatic stay pursuant to Section 362(d)(1) of the Bankruptcy Code.

**B. Wachovia Is Entitled to Relief from Stay Because the Debtor Has No Equity in the Property and the Property Is Not Necessary for an Effective Reorganization of the Debtor.**

16. On the Petition Date, the Debtor was obligated to Wachovia under the Notes, the Loan Agreement, the Security Deed, the Assignment and the other Loan Documents for principal and accrued interest (exclusive of any other amounts due and owing under the Notes, the Loan Agreement, the Security Deed, the Assignment and the other Loan Documents) in an amount in excess of \$64 million.

17. On information and belief, the Property is, and was on the Petition Date, not worth more than \$40 million. As a result, the Debtor has no equity in the Property, and in fact there is a substantial deficiency.

18. The Property is not necessary to an effective reorganization of the Debtor because there is not a reasonable possibility that the Debtor will be able to confirm a plan in this case within a reasonable time. See United Savings Association of Texas v. Timbers of Inwood Forest

Associates, Ltd. (In re Timbers of Inwood Forest Associates, Ltd.), 484 U.S. 365, 108 S. Ct. 626 (1988).

19. As a result of the foregoing, Wachovia is entitled to relief from the automatic stay pursuant to Section 362(d)(2) of the Bankruptcy Code.

**No Stay**

20. Wachovia requests that the Court order that the stay pursuant to Federal Rule of Bankruptcy Procedure 4001(a)(3) not be applicable to its order granting the requested relief.

WHEREFORE, Wachovia respectfully requests that the Court:

- (a) Grant the Motion;
- (b) Enter an order granting Wachovia immediate relief from the automatic stay pursuant to 11 U.S.C. § 362(d) to permit Wachovia to exercise its rights and remedies under the Notes, the Loan Agreement, the Security Deed, the Assignment and the other Loan Documents and applicable law including, without limitation, foreclosing on the Property, confirming the foreclosure sale under state law, and seeking the appointment of a receiver pending foreclosure;
- (c) order that the stay pursuant to Federal Rule of Bankruptcy Procedure 4001(a)(3) not be applicable to its order; and
- (d) Grant to Wachovia such other relief as the Court deems just and proper.

This 4th day of March, 2010.

SEYFARTH SHAW LLP

/s/ Paul Baisier  
Paul Baisier  
Georgia Bar No. 032825  
Shuman Sohrn  
Georgia Bar No. 143104

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Atlanta, GA 30309-2401  
404-885-1500 (Phone)  
404-892-7056 (Facsimile)

*Attorneys for Wachovia Bank, National Association*

**CERTIFICATE OF SERVICE**

This is to certify that I have this day caused to be served upon all parties listed below a copy of the foregoing MOTION FOR RELIEF FROM AUTOMATIC STAY (without Exhibits unless otherwise indicated) by causing a true and correct copy of same to be deposited in the United States Mail with sufficient postage affixed thereto, addressed as follows:

Austin Carter Stone & Baxter, LLP Fickling & Co. Building, Suite 800 577 Mulberry Street Macon, GA 31201-2728 (w Exhibits)	Fourth Quarter Properties XLVII, LLC 45 Ansley Drive Newnan, GA 30263-7107 (with Exhibits)	Office of the US Trustee Suite 362 75 Spring Street, SW Atlanta, GA 30303 (with Exhibits)
	3 <sup>rd</sup> Works, LLC 5326 Van Dyke Road Lutz, FL 33558-4829	Ahlberg Engineering, Inc. Attn: Jim Ahlberg 525 Webb Industrial Drive, Suite A Marietta, GA 30062
American Arbitration Association 2200 Century Parkway Suite 300 Atlanta, GA 30345-3126	B2 and Company Exponential 5440 N. Old Road Attn: Beth Bradford Park City, UT 84098-6321	Bounce/David Arnold 512 Means Street Atlanta, GA 30318-5798
Capital Properties Group, LLC Attn: Ed Lee 3801 Parian Ridge Road, NW Atlanta, GA 30327-3027	City of Alpharetta Attn: Lynn Pierson 287 South Main St Alpharetta, GA 30009-1937	Cushing, Morris, Armbruster & Montgomery 191 Peachtree Street NE Suite 4500 Atlanta, GA 30303-1756
Fulton County Tax Commissioner Attn: Arthur E. Ferdinand P.O. Box 105052 Atlanta, GA 30348-5052	Geosurvey, Ltd. Attn: Tenton Turk 1170 Atlanta Industrial Drive Marietta, GA 30066-6603	HKS, Inc. 1919 McKinney Avenue Dallas, TX 75201-1768
Hartman, Simons, Spielman & Wood LLP 6400 Powers Ferry Road, NW Suite 400 Atlanta, GA 30339-2986	Herschman Architects, Inc. 25001 Emery Road Suite 400 Cleveland, OH 44128-5627	IDQ Realty Advisors, Inc. Attn: Ignacias de Quesada PO Box 88338 Atlanta, GA 30356-8338
Iris J. Callie Company Attn: Iris J. Callie 4600 Via Dolce #317 Marina Del Ray, CA 90292-6779	Johnson & Bryan 1545 Northside Drive, NW Suite 100 Atlanta, GA 30318-4235	Jones Design Group, Inc. 342 Marietta Street Suite 3 Atlanta, GA 30313-1644
Koniver Stern Group, Inc. Attn: Bruce Koniver 1565 Washington Ave Miami Beach, FL 33139	Lowe Engineers, LLC Attn: Chris Owens 2000 Riveredge Pkwy, Suite 400 Atlanta, GA 30328-4618	Newnan Blue Print 167 Millard Farmer Ind. Blvd. Newnan, GA 30263-1132
Pac-Van, Inc. 2995 S. Harding Street Indianapolis, IN 46225-2264	Prudential Georgia Realty 11525 Haynes Bridge Rd; Suite 200 Alpharetta, GA 30009-4822	Redmond Schwartz Mark Design 160 Cabrillo San Clemente, CA 92672

Rolader & Rolader 11660 Alpharetta Highway Suite 630 Roswell, GA 30076-3891	SEC Planning, LLC Attn: Matthew Master 1755 North Brown Road Lawrenceville, GA 30043-8198	SWA Group Attn: Chuck McDaniel 2211 N. Lamar #400 Dallas, TX 75202-1080
Setco Grading, LLC Attn: Amy Bowman 50 Ansley Drive Newnan, GA 30263-7107	Showcase, Inc. 3470 Parsons Run Suwanee, GA 30024-1094	Specialty Retail Development 5500 Interstate North Pkwy Suite 100 Atlanta, GA 30328-4662
Stanley E. Thomas 45 Ansley Newnan, GA 30263-7107	TS Worldwide LLC 201 Linden Street Suite 301 Fort Collins, CO 80524-4431	The McDevitt Company Attn: Lorraine Abney 875 N. Michigan Avenue Suite 3100 Chicago, IL 60611-1962
The Partnership, Inc. Attn: David Arnold 512 Means Street Atlanta, GA 30318-5798	The Shopping Center Group, LLC PO Box 933617 Atlanta, GA 31193-3617	URS Corporation Attn: John Oliver 400 Northpark Town Center Atlanta, GA 30328
Vratsinas Construction Co. Attn: Jeff Johnson 1000 Abernathy Road, NE Suite 1130 Atlanta, GA 30328-5652 (w/ Exhibits)	SEC Planning, LLC Attn: Peter Verdicchio 12357 Riata Trace Parkway Suite A205 Austin, TX 78727 (w/ Exhibits)	Wakefield Beasley & Associates Attn: Lamar Wakefield 5155 Peachtree Pkwy #300 Norcross, GA 30092-2526
Walker Parking Consultants Attn: Victor Iraheta 125 Townpark Drive Suite 375 Kennesaw, GA 30144-3703	Willis Inc. Service of GA 1 Glenlake Pkwy, 11 <sup>th</sup> Floor Atlanta, GA 30328-3496	J. Carole Thompson Hord Schreeder, Wheeler & Flint, LLP 1100 Peachtree Street NE Suite 800 Atlanta, GA 30309
	C. Sam Thomas Christina A. Craddock Bovis, Kyle & Burch, LLC 200 Ashford Center North Suite 500 Atlanta, GA 30338-2668	The Shopping Center Group, LLC Attn: Marc Weinberg 300 Galleria Parkway 12th Floor Atlanta, GA 30339 (w/ Exhibits)

This 4th day of March, 2010.

/s/ Paul Baisier  
Paul Baisier